

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

ERIC BENITEZ,

Plaintiff,

v.

CALIFORNIA PIZZA KITCHEN, INC.,

Defendant.

Case No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a), defendant California Pizza Kitchen, Inc. (“defendant” or “CPK”), by its undersigned attorneys, hereby files this Notice of Removal of the above-captioned action currently pending in the Superior Court of New Jersey, Bergen County, Law Division, and in support thereof, shows the Court as follows:

1. Defendant desires to exercise its statutory right under the provisions of Title 28 U.S.C. §§ 1441-1452 to remove this action from the Superior Court of New Jersey, Bergen County, Law Division, in which said cause is now pending under the name and style “Eric Benitez v. California Pizza Kitchen, Inc.,” Docket No.: BER-L-4773-21 (the “State Action”).

2. On or about August 2, 2021, defendant received the Summons and Complaint in the State Action (the “Complaint”). Pursuant to the provisions of 28 U.S.C. § 1446, defendant incorporates herein by reference said Complaint, a copy of which is annexed hereto as Exhibit A. No further proceedings have been had in the State Action since the service of the Summons and Complaint.

3. This is an action of a civil nature of which the District Courts of the United States have original jurisdiction in that (i) the State Action arises under the laws of the United States as provided in 28 U.S.C. § 1331; and (ii) the State Action, upon information and belief, involves a matter in controversy in excess of \$75,000, exclusive of interest and costs, and is between citizens of different States as provided in 28 U.S.C. § 1332(a)(1). Accordingly, under the provisions of 28 U.S.C. §§ 1441-1452, the right exists to remove this cause from the Superior Court of New Jersey, Bergen County, Law Division, to the District of New Jersey, which embraces the place where this action is pending. 28 U.S.C. § 110.

4. The Complaint reveals that plaintiff Eric Benitez (“plaintiff”) is a resident of the State of New York, County of Rockland. Because defendant is a Delaware corporation with its principal place of business located in California, it is deemed, pursuant to 28 U.S.C. § 1332(c)(1), to be a citizen of Delaware and California for the purposes of 28 U.S.C. § 1441. The damages sought in the Complaint are, upon information and belief, in excess of \$75,000. Thus, diversity jurisdiction exists because the matter in controversy exceeds the sum of \$75,000 and is between citizens of different states (28 U.S.C. § 1332(a)(1)).

5. In the State Action, plaintiff asserts claims and seeks damages based upon alleged violations of federal Families First Coronavirus Relief Act, Public Law 116-127 (March 18, 2020) - 29 U.S.C. § 2601 (as well as of the New Jersey Law Against Discrimination and the New Jersey Earned Sick Leave Law). Thus, the State Action expressly alleges a controversy arising out of the statutes and laws of the United States, and is therefore properly removable to this Court.

6. Based on the foregoing, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331, and, thus, this action may be removed to this Court pursuant to 28 U.S.C. § 1441(a). Because plaintiff’s state claims are so closely related to plaintiff’s federal

claims that they form part of the same case and controversy, and arise out of the same set of operative facts, the Court can properly exercise jurisdiction over the non-federal claims under 28 U.S.C. § 1367(a).

7. The date on or before which defendant is required by the laws of the State of New Jersey to answer or otherwise respond to plaintiff's Complaint has not passed. The Complaint was not received by defendant earlier than August 2, 2021. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is filed within 30 days after defendant's receipt of a copy of the Complaint.

8. Defendant desires and is entitled to have this cause removed from the Superior Court of New Jersey, Bergen County, Law Division, to the United States District Court for the District of New Jersey, such being the district where said suit is pending, on the condition that defendant will pay all costs and disbursements incurred by reason of these removal proceedings should it be determined that this cause was not removable or was improperly removed according to law.

8. Written notice of the filing of this Notice of Removal is being given to plaintiff as required by law. A true copy of this Notice of Removal is being filed with the Clerk of the Superior Court of New Jersey, Bergen County, Law Division, as required by law.

WHEREFORE, defendants respectfully give notice that the action now pending against them in the Superior Court of New Jersey, Bergen County, be removed therefrom to this Court and that this Court accept jurisdiction of this action, and henceforth that this action be placed on the docket of this Court for further proceedings the same as though this action had originally

been filed and instituted in this Court.

Dated: August 30, 2021

Respectfully submitted,

VEDDER PRICE P.C.

By: /s/ Fleming L. Ware

Fleming L. Ware

Jonathan A. Wexler (pro hac vice application
forthcoming)

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